

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

APPEAL SUIT No. 787 of 1997

JUDGMENT :

This appeal is filed against judgment and decree dated 25.03.1997 in OS.No.153 of 1996 passed by the District Judge, Vizianagaram. The suit was originally filed as OS.No.12 of 1991.

For the sake of convenience, the parties are referred to as they are arrayed in the suit only.

The suit is filed for a declaration that the plaintiffs are the absolute owners of the property and for a relief of a permanent injunction against the State of Andhra Pradesh, Revenue Divisional Officer, Vijayanagaram and Mandal Revenue Officer, Kothavalasa. The plaintiffs case is that they are the owners of the property, which is described in the suit schedule. They seek a decree more particularly with regard to 'B' schedule property which is land in Sy.Nos.9/1 and 9/2 in Pedaraopalli Village and also in Sy.No.44/1 of the said village. The prayer is specifically made for item 'B'. The claim of the plaintiffs is that they have acquired the property under an agreement of sale dated 11.08.1975 and that in part performance of the agreement of sale they have been put in possession and enjoyment of the property. They acquired the property from one Sri Bhoopathiraju Subba Raju, who in turn got the property from his father Venkatapathi Raju. The

plaintiffs claim that they were given the pattadar pass books, record of ryot books etc. Despite their long possession and enjoyment, the respondents gave a notice seeking to cancel the pattadar pass book and record of rights and also threatening to resume possession of the property. The relief of declaration is also sought stating that the proceedings issued under Ex.A.30 are illegal and invalid.

In response to this, the Government through the Mandal Revenue Officer filed a written statement denying that the plaintiffs being the predecessors of interest had any right, title or interest in the property. The defendants plea is that the land is classified as assessed waste dry and poramboke land. It is the land that is vested in the Government. The defendants plead that during the rechecking operation, the lands were erroneously classified as ryotwari lands and the names of the plaintiffs' family were shown to be in possession. The defendants state that as the classification is made erroneously, notices were issued asking the plaintiffs to prove their right title and interest. They state that the plaintiffs failed to prove their right title or interest. Therefore, according to the defendants, the plaintiffs have no right to seek any relief. Basing on the above pleadings, the following issues were framed:

- (1) whether the plaintiffs are entitled for declaration as prayed for?

(2) whether the plaintiffs are entitled for consequential permanent injunction as prayed for?

(3) whether the civil Court has no jurisdiction and whether the suit is not maintainable?

(4) whether the valuation of the suit is not correct?

(5) to what relief?

On these issues, the parties went to trial. For the plaintiffs, PWs.1 and 2 were examined and Exs.A.1 to A.32 were marked. For the defendants, DW.1 was examined and Exs.B.1 and B.2 were marked.

The suit was ultimately dismissed by the impugned judgment. Questioning the same, the present appeal is filed.

This Court has heard Sri P.V.Vidyasagar, learned counsel for the appellants and Government Pleader for Appeals for the respondents.

The learned counsel for the appellants argued that basing on an agreement of sale from the original land owner the plaintiffs were in settled possession of the property and the revenue authorities recognized their possession and enjoyment of the land by issuing the ryot pass book and later the pattadar pass book and record of rights books also. He argued that the defendants/respondents cannot deny their own documents and non-suit the plaintiffs. The contention of the counsel for the respondents is that the original land

owner did not execute any document of transfer of title, that an agreement of sale confers no title, that the pass books etc., were obtained by playing fraud and so he supports the judgment of the lower Court.

As the suit is filed for a declaration, the burden squarely lies upon the plaintiffs to prove their title and enjoyment over the suit schedule property. The weaknesses of the defendants case or the demerits of defendants case will not entitle the plaintiff to a declaration. The plaintiff will have to fail or succeed on the strength of his own title. The law on the subject which is well settled does not required repetition, but for the sake of this judgment, this Court relies on the judgment of the Hon'ble Supreme Court of India in ***Union of India (UOI) v. Vasavi Co-op. Housing Society Ltd.***,¹ wherein the above legal position was reiterated.

Against this back drop, this Court is proposing to examine the judgment that is passed in the present case. Of all the documents that are filed, the most important in the opinion of this Court are Exs.A.4 to Ex.A.9 which are the pattadar pass books and the title deed books in the name of the three plaintiffs. Ex.A.19 and Ex.A.20 are the ryot pass books in the name of K.Sanayasi Naidu and K.Satyanarayana. Ex.A.21 and Ex.A.22 are the orders passed by the Assistant Settlement Officer, Srikakulam, which is

¹ 2014 (2) SCC 269

relied upon by the plaintiff and Exs.A.30 and 31 are the notices which are challenged. The oral evidence of the witnesses is also being considered.

PW.1, who is the first witness examined and states that they have purchased 'B' schedule property from B.Subba Raju under an agreement dated 11.08.1975. The witness admits that the sale agreement is in the name of his mother who is the third plaintiff. He further states that they are four brothers and the property is divided into five shares between the four brothers and the mother. He admits that apart from the plaintiffs, there are two other brothers who have not joined the suit. In the cross-examination, all of this is elicited. In addition, a suggestion was also put to the witness that the suit is bad of non-joinder of the parties. Apart from this evidence, PWs.2 and 3 are examined to prove the plaintiffs possession of the property. No documentary evidence *per se* is filed by them and their cross-examination shows that they do not have lands in the vicinity of land for this court to rely on their oral evidence.

Exs.A.1 to A.3 documents which are obtained in April, 1994, but as mentioned earlier the suit was originally filed in December, 1991. These documents are adangal copies which are obtained subsequent to the filing of the suit. Not much evidentiary value can be given to these documents. Exs.A.4 to A.9 are the pattadar pass books and the title deed books.

These documents are in the name of the three plaintiffs and they show that the three plaintiffs are in possession and enjoyment of small sub divided bits of land. They do not show the enjoyment or possession of the land described as the 'B' schedule for which the declaration is sought.

Exs.A.10 and A.20 are two ryot passbooks. As per Ex.A.19, K.Sanyasi Naidu, the third plaintiff is in possession of entire Sy.No.44/1 measuring Ac.8.50 cents. As per Ex.A.20, Sri K.Satyanarayana, who is plaintiff No.1 is in possession and enjoyment of the entire land in Sy.No.9/2 measuring Ac.8.11 cents. There is absolutely no explanation by these two plaintiffs about the exclusion of the third plaintiff or how the two brothers alone are in exclusive possession and enjoyment of these two properties.

The other important document is Ex.A.22 on which the learned counsel for the appellant relies and argues that the title of his vendor has been upheld in this case before the Assistant Settlement Officer, Srikakulam. Therefore, he argues that the vendor had a right to convey the property to the present plaintiffs. In reply to this, the learned Government Pleader submits that Ex.A.22 does not pertain to the suit schedule property at all and that it actually pertains to land in other survey numbers and to third parties who are not before this Court. This Court on an examination finds that the suit schedule property is in Sy.Nos.9/1 and 9/2 and

the claim for Sy.No.9/1 is actually rejected by the Assistant Settlement Officer. This order is also passed in a matter that is not relating to the plaintiffs. Hence this document also does not take the case of the plaintiffs forward.

This Court after analyzing the evidence is of the opinion that the plaintiffs by basing on an agreement of sale which did not result in any sale deed cannot file or maintain a suit for declaration of title. Even if possession is delivered under the agreement of sale, they can at best rely on the same and defend their possession, but in the absence of a regular sale deed/conveyance and in the absence of clear flow of title they cannot maintain a suit for declaration of title.

In addition, as they are not able to prove their possession also, this Court is of the opinion that they cannot maintain a suit for an injunction. This Court also notices that in the evidence of DW.1 it has clearly come out that plaintiff No.1 was working as a Village Administrative Officer of Pedaraopalli village, Kothavalasa Mandal. He was previously a headman of Pedaraopalli Village. Therefore, the defendants urge and state that all the documents including pattadar passbooks are illegally created due to the mischief played by the Village Administrative Officer, namely plaintiff No.1.

This Court also notices that no explanation is forthcoming about the small extents mentioned in Exs.A.4 to

A.9. How the land was divided, when the land was divided is not mentioned. The agreement of sale admittedly is in the name of the mother, who is plaintiff No.3. It did not fructify into a sale deed. The absence of other two brothers is not explained. Despite cross-examination to the effect that the suit is bad of non-joinder, no steps were taken to join the other two brothers to the suit. In addition, this Court notices that while discussing the case, the Court below analyzed each of the exhibits from Exs.A.1 to A.31 and later, Exs.B.1 to B.3 were also discussed. The analysis conducted by the lower Court could not really be faulted by the counsel for the appellant-plaintiff.

The analysis of the documents by the lower Court is correct. The plaintiffs failed to prove their title or the title of their vendors. The agreement of sale is not a document of title and the same was also not marked as an exhibit also. Revenue records are not documents of title also as per the settled law.

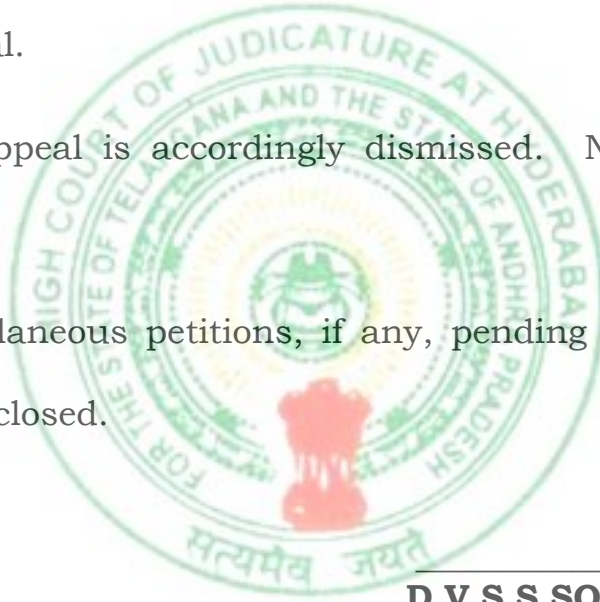
In the opinion of this Court, the lower Court rightly decided upon issues 1 to 3. This Court also concurs with the findings of the Court below on issues 1 to 3. This Court holds that the plaintiffs are not entitled to a declaration or an injunction as neither their title nor possession are clearly proved. On issue No.3 also this Court holds that the civil Court has jurisdiction to decide the suit. On issue Nos.4 and

5, nothing really was argued and the Court below also noticed that an application was filed in the Court below to dispense with Section 80 CPC., notice. Unfortunately, no specific order was passed. Therefore, this Court concurs with the findings of the Court below on issue No4. On issue No.5, the Court held that ad valorem Court fee is paid and the issue was answered.

Therefore, after a review of all the oral and documentary evidence, this Court is of the opinion that there are no merits in the appeal.

The appeal is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.



D.V.S.S.SOMAYAJULU, J

Date: 24.10.2018
KLP